

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SCOTT EVATT,

Plaintiff,

v.

MARY MARTIN et al.,

Defendants.

CASE NO. 3:15-CV-05756-RBL-JRC

REPORT AND RECOMMENDATION

NOTED FOR: APRIL 8, 2016

Plaintiff Scott Evatt, proceeding *pro se* and *in forma pauperis*, filed this civil rights complaint under 42 U.S.C. § 1983. Before the Court is plaintiff's voluntary motion to dismiss his complaint Dkt. 18. Because no defendants have been served in this action, the undersigned recommends that the motion be granted and that plaintiff's complaint be dismissed without prejudice.

BACKGROUND

On November 24, 2015, plaintiff filed a prisoner civil rights complaint. Dkt. 8. On November 25, 2015, the Court ordered plaintiff to show cause why his case should not be dismissed for failure to state a claim. Alternatively, plaintiff was directed to file an amended complaint on or before December 24, 2015. Dkt. 9. On December 9, 2015, plaintiff filed an

1 amended complaint. Dkt. 10. The Court found the amended complaint to be deficient and
 2 granted plaintiff another opportunity to show cause or amend his complaint. Dkt. 12. On
 3 February 8, 2016, plaintiff filed his second amended complaint, which the Court also found to be
 4 deficient. Dkt. 15. However, the Court granted plaintiff one more opportunity to show cause or
 5 amend his complaint. Dkt. 17.

6 On February 29, 2016, plaintiff filed a motion to voluntarily dismiss his complaint stating
 7 that he has “no choice, but to drop my 1983 civil complaint.” Dkt. 18.

8 **DISCUSSION**

9 Rule 41 sets forth the circumstances under which an action may be dismissed. Under
 10 Rule 41(a)(1), an action may be dismissed by the plaintiff without order of court:

11 (i) by filing a notice of dismissal at any time before service by the adverse party
 12 of an answer or of a motion for summary judgment, whichever first occurs, or (ii)
 13 by filing a stipulation of dismissal signed by all parties who have appeared in the
 action.

14 None of the defendants have been served in this matter. The Court should grant
 15 plaintiff’s motion (Dkt. 18) and dismiss this action without prejudice.

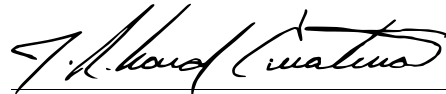
16 **CONCLUSION**

17 The undersigned recommends that plaintiff’s motion to voluntarily dismiss his complaint
 18 (Dkt. 18) be granted.

19 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
 20 Procedure, the parties shall have fourteen (14) days from service of this Report to file written
 21 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
 22 objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the time
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 24

1 limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **April 8,**
2 **2016**, as noted in the caption.

3 Dated this 14th day of March, 2016.

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5 J. Richard Creatura
6 United States Magistrate Judge
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